

### REMARKS

The Office Action of December 12, 2008, has been received and reviewed.

Claims 1-23, 25, 56-67, and 69-97 are currently pending and under consideration in the above-referenced application. Each of claims 1-23, 25, 56-67, and 69-97 has been rejected.

Reconsideration of the above-referenced application is respectfully requested.

### Objections to the Drawings

The Office has objected to the drawings of the above-referenced application for purportedly not illustrating every feature specified in the claims, as required by 37 C.F.R. § 1.183(a).

It has been asserted that the drawings do not illustrate “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture...” Office Action of January 25, 2010, page 3. It appears that the Office also asserts that the drawings must also show a lens. Office Action of January 25, 2010, page 2. Fig. 2 clearly shows a light therapy device that includes a lens 34. Paragraph [0028] indicates that there is a light source 50 behind the lens 34. An embodiment of that light source 50 is shown in Figs. 4 and 5. Paragraphs [0029] and [0030] (a point that the Office seems to have acknowledged at page 2 of the Office Action of January 25, 2010). In particular, that embodiment of light source 50 includes CCFL tubes 51. Figs. 4 and 5 also depict the CCFL tubes 51 and a power supply 64 are carried by a portable housing 32, with the CCFL tubes 51 being visible through a light emission aperture 33. Thus, it is apparent that the drawings illustrate “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture...” and that a lens may be disposed over the CCFL tubes.

It has also been asserted that the drawings do not depict “means for downloading software to the processor from an external source...” Office Action of December 12, 2008, page 2. While this subject matter is depicted by Fig. 1, which provides a schematic representation of a light therapy device that includes, among other things, a “data input” 22 that communicates with

a processor 20, claims 69 and 82 have been revised to remove any reference to “means for downloading software.” Thus, it is respectfully requested that the objection to drawings for not depicting “means for downloading software” be withdrawn.

The Office has also asserted that the drawings do not show “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing...” Office Action of December 12, 2008, page 2. A specific embodiment of a light therapy device including all of these features is shown in Fig. 8, including a portable housing 72, a lens 76, and a matrix of light emitting diodes 80 visible through the light emission window 74. While the lens 76 diffuses light and may partially obscure the matrix of light emitting diodes 80 (paragraph [0040] indicates that removal of the lens 76 “more clearly show[s]” the light emitting diodes of the matrix 80), the light emitting diodes of the matrix 80 are still visible through the light emitting window 74. Therefore, it is respectfully submitted that the drawings show “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing...”

In view of the foregoing, it is respectfully submitted that each and every element identified by the Office is depicted by the drawings of the above-referenced application. Accordingly, it is respectfully requested that the 37 C.F.R. § 1.83(a) objections to the drawings be withdrawn.

**New Matter Rejection under 35 U.S.C. § 132(a)**

The Office has presented a new matter rejection under 35 U.S.C. § 132(a) regarding several elements recited by the claims, asserting that the rejected claim elements are not supported by the as-filed specification.

“[T]hat illuminate the ocular area of a subject at an intensity of less than 2,500 lux” has basis in the as-filed specification at paragraph [0026], which indicates that “[t]he device typically provides intensities of 2,500 lux...,” and at paragraph [0040], which discloses that intensities that are lower than 2,500 lux (*i.e.*, “an effective range of 1,000 lux to 2,000 lux at 6 to 12 inches”) are also possible.

“[T]hat illuminate the ocular area of a subject at an intensity of less than 2,500 lux... wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes” also has support in the as-filed specification. In particular, as explained in the preceding paragraph, the as-filed specification discloses that the ocular area of a subject may be illuminated with an intensity of less than 2,500 lux. While that disclosure is made in the context of an embodiment of light therapy apparatus that includes LEDs rather than CCFLs, from the disclosure of the as-filed specification, one of ordinary skill in the art would readily comprehend that CCFLs, which are capable of providing much greater illumination (e.g., at least 10,000 lux according to paragraph [0026]), may also provide illumination at an intensity of less than 2,500 lux with similar effects as illumination provided by LEDs.

“A light therapy apparatus... comprising... a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture” is shown in Figs. 4 and 5 of the as-filed application and described in as-filed paragraphs [0029] and [0030].

“[T]he processor is programmed to control the amount of light” is described at paragraph [0042] of the as-filed specification, which provides that the processor is useful for determining the “amount of light usage.” In addition, paragraph [0033] of the as-filed specification discusses the ability of an inverter, which operates under control of a processor (paragraph [0030]), “to dim down or ramp up the light output from the light source.”

In addition, paragraph [0033] of the as-filed specification provides that the inverter may cause the light to dim or ramp up, respectively enabling “a dusk simulation to aid in falling asleep” and dawn simulation to “allow[] for natural waking.” Thus, the as-filed specification describes a light therapy apparatus that “is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn.”

“A light therapy apparatus... comprising... a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing” is described at paragraphs [0039] and [0040] of the as-filed specification. While the lens 76 diffuses light and may partially obscure the matrix of light emitting diodes 80 (paragraph [0040] indicates that removal of the lens 76 “more clearly

show[s]” the light emitting diodes of the matrix 80), the light emitting diodes of the matrix 80 are still visible through the light emitting window 74. Therefore, it is respectfully submitted that the as-filed specification describes “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing...”

“A light therapy apparatus... comprising... portable housing at least partially containing the light source” is described throughout the as-filed specification. Paragraphs [0029] and [0030] of the as-filed specification describe one embodiment, which clearly depict CCFL tubes 51 as being disposed within a recess 33 of a case 32.

“A light therapy apparatus... comprising... window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing” is described at paragraphs [0039] and [0040] of the as-filed specification. Again, although a lens 76 may obscure the LEDs lying under it, they would still be visibly discrete from an exterior of the portable housing 72.

Several embodiments of “[a] light therapy apparatus... comprising... at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing... [sic]” are described throughout the specification of the above-referenced application. For example, paragraph [0040] describes an embodiment of light therapy apparatus with a matrix of LEDs 80 that is visible from an exterior of the housing 72 of that light therapy apparatus.

In view of the foregoing, withdrawal of the 35 U.S.C. § 132 new matter rejections is respectfully solicited.

#### **Rejections under 35 U.S.C. § 112, First Paragraph**

Claims 1-23, 25, 57-67, and 69-89 have been rejected under 35 U.S.C. § 112, first paragraph, for reciting subject matter that purportedly lacks an adequate written description in the as-filed specification.

With respect to the written description requirement of the first paragraph of 35 U.S.C. § 112, M.P.E.P. 2163 I provides:

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

“[I]lluminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy” (Office Action of December 12, 2008, page 7) is described by paragraphs [0026] and [0040] of the as-filed specification. Paragraph [0026] describes an ocular light therapy device (*see also* paragraphs [0020] and [0024]) capable of illuminating an ocular area of a subject at an intensity of 2,500 lux, while paragraph [0040] provides examples of devices that illuminate ocular areas at intensities that are under 2,500 lux.

Paragraphs [0026] and [0040] of the as-filed specification also provide support for “illuminating the light emission area at an intensity of less than about 2,500 lux at a distance suitable for ocular light therapy...wherein the light output device comprises a pluralit of cold cathode fluorescent lamp (CCFL) tubes...” Office Action of December 12, 2008, page 7.

Basis for “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture...” (Office Action of December 12, 2008, page 7) is provided by Figs. 4 and 5 of the as-filed specification, as well as in the text that accompanies these figures.

Paragraph [0049] of the as-filed specification provides basis for “the processor is programmed to control the amount of light...” (Office Action of December 12, 2008, page 7), while paragraphs [0030] and [0033] and Fig. 8 disclose at least one embodiment in which “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn.” Office Action of December 12, 2008, page 7.

Figs. 4, 5, 7, and 8 show a “portable housing at least partially containing the light source...” (Office Action of December 12, 2008, page 7), as well as a “window being formed

through the front member through which the plurality of light emitting elements are visibly discrete from and exterior of the portable housing...” (*id.*).

“[A]t least one light source carried by the portable housing, powered by the power supply, visible from an exterior [of the] housing...” (Office Action of December 12, 2008, page 7) is shown in Fig. 5 and described in paragraph [0030].

In view of the foregoing, it is respectfully submitted that the as-filed specification provides an adequate written description of all of the subject matter that has been identified by the Office.

#### **Rejections under 35 U.S.C. § 112, Second Paragraph**

Claims 1-20, 56-67 and 69-82 have been rejected under 35 U.S.C. § 112, second paragraph, for reciting subject matter that is purportedly indefinite.

In rejecting independent claim 1, the Office asserted that “the precise meaning of the term ‘ocular area’ is unclear. Office Action of January 25, 2010, page 15. It is respectfully submitted that one of ordinary skill in the art would readily comprehend that “ocular area” refers to the area in which the eyes of a subject are located. Therefore, use of the phrase “ocular area” in independent claim 1 is not indefinite.

In addition, the Office has objected to the recitation of “less than about 2,500 lux” in independent claim 1. One of ordinary skill in the art would readily understand the scope and meaning of that limitation. Therefore, inclusion of the phrase “less than about 2,500 lux” in independent claim 1 does not render the scope of that claim indefinite.

Claims 1-9, 11-20, 21-23, 25, 56, 58-67, and 69-97 have been rejected for assertedly lacking an essential element: a diffusing lens. Nowhere does not specification of the above-referenced application lead one of ordinary skill in the art to believe that a diffusing lens is an essential element of a light therapy apparatus. Thus, it would be improper for the Office to insist that the light therapy apparatuses to which claims 1-9, 11-20, 21-23, 25, 56, 58-67, and 69-97 are drawn be required to include diffusing lenses.

It is clear from the plain language of claim 56 that that claim does not require a diffusing lens. Therefore, the Office's interpretation of the scope of that claim is improper, as is its rejection of claim 56 under the second paragraph of 35 U.S.C. § 112.

The rejections of claims 65 and 66 are themselves unclear. The requirement that the claims recite a configuration of a "data input device" "that would prevent the input of e.g. subject data" is particularly unclear, as the function of a data input device is not to prevent the input of data but, rather, to enable data input.

As for the rejections of claims 69 and 82, various "means for downloading" software would be readily apparent to one of ordinary skill in the art. In any event, this recitation has been removed from claims 69 and 82.

In view of the foregoing, it is respectfully submitted that each of claims 1-20, 56-67 and 69-82 complies with the definiteness requirement of the second paragraph of 35 U.S.C. § 112. Accordingly, it is respectfully requested that the 35 U.S.C. § 112, second paragraph, indefiniteness rejections of these claims be withdrawn.

### **Rejections under 35 U.S.C. § 102**

Claims 1-5, 7-13, 18-21, 56-62, 64-67, 70-72, 83-89, and 93-97 have been rejected under 35 U.S.C. § 102.

A claim is anticipated only if each and every element, as set forth in the claim, is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). That single reference must show the identical invention ***in as complete detail and in the same arrangement as that contained in the claim.*** *Net MoneyIn, Inc. v. Verisign*, 545 F.3d 1359, 1369-70 (Fed. Cir. 2008) (emphasis supplied); *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

With respect to inherency, M.P.E.P. § 2112 provides:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) . . . 'To establish inherency,

the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill . . . ' *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1991).

Whitcher

Claims 87-89 have been rejected under 35 U.S.C. § 102(b) for being drawn to subject matter that is purportedly anticipated by the subject matter described in U.S. Patent 6,381,124 to Whitcher et al. (hereinafter "Whitcher").

The description of Whitcher is limited to a portable computer that includes an LCD monitor with CCFL backlights. With respect to the brightness of the monitor, or "screen assembly 73," of that computer, Whitcher merely describes that it "provides full vivid color display, even in *dimly lit* environments, which is an object of the present invention." Col. 6, lines 18-20 (emphasis supplied).

Independent claim 87 is drawn to an ocular light therapy apparatus. The ocular light therapy apparatus of independent claim 87 includes a portable housing, a power supply carried by the portable housing, and at least one light source carried by the portable housing and powered by the power supply. The at least one light source is "visible from an exterior of the housing." It is also "configured to emit light primarily having a blue wavelength at an intensity suitable for ocular light therapy."

Whitcher does not provide any express or inherent description that the monitor, or "screen assembly 73," of the disclosed computer is any brighter than a typical 256 color VGA monitor. As such, Whitcher does not provide any express or inherent description that the light source of the disclosed LCD monitor emits light "at an intensity suitable for ocular light therapy." As is readily apparent to those of ordinary skill in the art, if a computer monitor were to emit light at an intensity sufficient to provide ocular light therapy, as has been asserted by the Office, the illuminated computer monitor could not be comfortably viewed by an individual.

Regardless of the type of light source disclosed by Whitcher, Whitcher does not expressly or inherently describe that any light source, such as the disclosed CCFL backlights or



any other light sources that may be used in the disclosed LCD monitor, are “visible from an exterior of the portable housing.”

Furthermore, Whitcher includes no express or inherent description that the CCFL backlights of the disclosed LCD monitor emit light that “primarily ha[s] a blue wavelength.” Rather, the description of Whitcher is limited to an LCD monitor with CCFL backlights that emit a broad spectrum of “white” light, which is directed through a 256 color “screen assembly 73” that “provides full vivid color...” Col. 6, lines 18-20.

For each of these reasons, the monitor of the computer described in Whitcher does not expressly or inherently describe, or anticipate, each and every element of the ocular light therapy apparatus of independent claim 87.

Claims 88 and 89 are both allowable, among other reasons, for depending directly from independent claim 87, which is allowable.

Marsh

Each of claims 1-5, 11, 13, 18-21, and 57 is rejected under 35 U.S.C. § 102(b) for reciting subject matter that is assertedly anticipated by the disclosure of U.S. Patent 6,135,620 to Marsh (hereinafter “Marsh”).

The Office has clearly combined features from different embodiments to arrive at the subject matter recited by each of claims 1-5, 11, 13, 18-21, and 57. Office Action of December 12, 2008, page 4. As none of embodiments disclosed by Marsh includes the identical invention *in as complete detail and in the same arrangement as that contained in the claim* (*Net MoneyIn*, 545 F.3d at 1369-70), the rejection is improper under 35 U.S.C. § 102(b).

Moreover, Marsh lacks any express or inherent description as to the intensity of light emitted by the disclosed devices. It is, therefore, clearly possible that the disclosed devices do not meet the light output/intensity requirements of any of claims 1-5, 11, 13, 18-21, and 57.

Furthermore, none of the EXIT sign, the traffic signal, the task light, or any other device described by Marsh includes each and every element of any of claims 1-5, 11, 12, 18-21, or 57 in as complete detail and in the same arrangement as that recited by any of these claims.

The EXIT sign of Marsh is configured to be permanently mounted to a wall or ceiling. The housings of EXIT signs are not “portable.”

The EXIT sign of Marsh does not include a housing that is “configured to be placed upon a generally horizontal surface in an upright position,” as recited by both independent claim 1 and independent claim 21. Again, EXIT signs, including those described in Marsh, are configured to be mounted to vertical walls or to hang from ceilings, not to be “placed upon” generally horizontal surfaces.

In addition, Marsh provides no express or inherent description that the disclosed EXIT sign has a maximum peripheral dimension of ten inches.

Furthermore, the EXIT sign of Marsh apparently includes only one light source 72, 112, not the plurality of light sources required by both independent claim 1 and independent claim 21.

Marsh also lacks any express or inherent description of an EXIT sign with a light source 72, 112 that is *itself* visible from an exterior of the housing of that EXIT sign, as required by independent claim 21. Instead of the light source being visible from the exterior of the housing, it appears from the disclosure of Marsh that only the light emitted by the light source would be visible from the exterior of the housing. *See, e.g.*, FIGs. 7 and 10.

With respect to the traffic signal, Marsh lacks any express or inherent description that it has a maximum peripheral dimension of ten inches, as is required of the housing of the light therapy apparatus of independent claim 1.

Marsh also provides no express or inherent description that the disclosed traffic signal is “configured to be placed upon a generally horizontal surface in an upright position,” as is required of the housing of the light therapy apparatus of independent claim 21.

Furthermore, Marsh lacks any express or inherent description that a CCFL tube of the disclosed traffic signal is visible from an exterior of the traffic signal. To the contrary, Marsh explains that the traffic signal must be disassembled before any of the CCFL tubes are visible. Col. 11, lines 58-59.

For these reasons, it is respectfully submitted that Marsh does not expressly or inherently describe, or anticipate, each and every element of the light therapy apparatus of independent claim 1 or of the light therapy device of independent claim 21. As such, independent claim 1

and independent claim 21 are both drawn to subject matter that, under 35 U.S.C. § 102(b), is allowable over the subject matter described in Marsh.

Each of claims 2-5, 11, 13, 18-20, 56, and 57 is allowable, among other reasons, for depending directly or indirectly from claim 1, which is allowable.

Claim 18 is further allowable since Marsh includes no express or inherent description of a device that includes a manual timer.

Claim 56 is also allowable because Marsh includes no express or inherent description of a light therapy apparatus that includes a light output device with a plurality of light sources that are configured to output light of about 1,000 lux to about 2,000 lux at a distance of about 6 inches to about 12 inches.

Pederson

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-78, 83-86, and 93-95 have been rejected under 35 U.S.C. § 102(e) for being drawn to subject matter that is allegedly anticipated by the disclosure of U.S. Patent 6,875,225 to Pederson et al. (hereinafter “Pederson”).

Pederson describes a device with a light source that emits light having an intensity of “between 2,500 lux to 7,500 lux.” Col. 3, line 5; *see also* col. 1, lines 51-53.

Independent claim 1 is directed to a light therapy apparatus that with light sources that “illuminate the light emission area at an intensity of less than about 2,500 lux...”

As the “less than about 2,500 lux” recited by independent claim 1 is less than the “between 2,500 lux to 7,500 lux” of Pederson, it is respectfully submitted that Pederson does not anticipate each and every element of independent claim 1, as would be required to maintain the 35 U.S.C. § 102(e) rejection of that claim.

Claims 7-12, 19, 20, 56-62, 64-67, 70-72, and 86 are each allowable, among other reasons, for depending directly or indirectly from independent claim 1, which is allowable.

Independent claim 73 is allowable since Pederson provides no express or inherent description of a light therapy device that has a maximum weight of about four pounds.

Each of claims 74-78 is allowable, among other reasons, for depending from independent claim 73, which is allowable.

Claim 78 is further allowable since Pederson provides no express or inherent description of a light therapy device with a process that controls at least one of an amount and a timing of therapeutic ocular light to be delivered to a subject.

Independent claim 83 is allowable because Pederson does not expressly or inherently describe a light therapy device with “a cover pivotally connected to [a] portable housing and configured to transition from a closed position over a front side of the portable housing to an open position behind an opposite, back side of the portable housing, the cover being positioned over [a] light source when in the closed position and supporting the portable housing in an upright position when the cover is in the open position.” Instead, the description of Pederson is limited to an embodiment in which a leg 40 that is pivotally secured to the back side of a housing 10 flips out to support the housing (FIG. 3) and to an embodiment in which an upper, light source containing portion 110 of a housing flips up from a base 112 of the housing (FIG. 5). Regardless of where the devices described by Pederson are mounted (*e.g.*, under the dashboard of an automobile or elsewhere), their covers still do not flip from a position over their light source to an opposite side of the housing.

Each of claims 84-86 is allowable, among other reasons, for depending directly or indirectly from independent claim 83, which is allowable.

Independent claim 93 recites a light therapy device with a multi-functional element. The multi-functional element is secured to the housing and configured to be associated therewith in a first position in front of the housing and in a second position behind the housing. In the first position, the multi-functional element covers the light source in the housing. In the second position, the multi-functional element supports the housing and the light source in at least one position that facilitates direction of light from the light source toward at least one eye of a subject. Again, regardless of whether the light therapy apparatus of Pederson is mounted to another structure, it includes no multi-functional element that meets the requirements of

independent claim 93. Thus, the subject matter recited in independent claim 93 is not anticipated by the disclosure of Pederson, as would be required to maintain the 35 U.S.C. § 102(e) rejection of independent claim 93.

Claims 94 and 95 are both allowable, among other reasons, for depending directly and indirectly, respectively, from independent claim 93, which is allowable.

Yano

Claims 83-88 and 93-97 stand rejected under 35 U.S.C. § 102(e) for being drawn to subject matter that is purportedly anticipated by the subject matter described in U.S. Patent 7,057,886 to Yano et al. (hereinafter “Yano”).

The description of Yano is limited to a portable video display device with a liquid crystal display (LCD) screen.

The light therapy device of independent claim 83 includes a portable housing and a light source with a plurality of light emitting elements that “are visibly discrete from an exterior of the portable housing.”

There is no express or inherent description by Yano that the LCD screen of that device includes a plurality of light emitting elements that are visibly discrete from an exterior of the portable housing. Rather, Yano describes a device with an LCD screen and, presumably, a light source hidden behind the LCD screen in a manner that the light source will illuminate the LCD screen without actually being seen through the LCD screen. Therefore, Yano does not anticipate each and every element of independent claim 83.

Moreover, with respect to the subject matter recited in independent claim 87, it is respectfully submitted that Yano does not expressly or inherently describe that the LCD screen of the video display device disclosed therein is configured to emit light primarily having a blue wavelength; to do so would be counterintuitive, as most people would find it highly undesirable to view movies that are primarily blue.

Further, Yano does not expressly or inherently describe that the LCD screen of that device includes a light source configured to emit light suitable for ocular light therapy, as is required of the light therapy devices recited in each of independent claims 83, 87, and 93. To

repeat: if the LCD screen of the video display device of Yano did emit light suitable for ocular light therapy, it would be too bright and uncomfortable to view.

In view of the foregoing, it is respectfully submitted that, under 35 U.S.C. § 102(e), each of independent claims 83, 87, and 93 is drawn to subject matter that is allowable over the video display device described in Yano.

Claims 84-86 are allowable, among other reasons, for depending directly from independent claim 83, which is allowable. Claim 84 is further allowable because Yano provides no express or inherent description that the cover body 52, in its open position, rests flat on a surface. *See* FIGs. 1 and 19C.

Claim 86 is further allowable since Yano does not expressly or inherently describe that the LCD screen of the video display device disclosed therein is configured to emit light primarily having a blue or a green wavelength; to do so would be counterintuitive, as most people would find it highly undesirable to view movies that are primarily blue or green.

Claim 88 is allowable, among other reasons, for depending directly from independent claim 87, which is allowable.

Each of claims 94-97 is allowable, among other reasons, for depending directly or indirectly from independent claim 93, which is allowable.

Withdrawal of the 35 U.S.C. § 102 rejections of claims 1-5, 7-13, 18-21, 56-62, 64-67, 70-72, 83-89, and 93-97 is respectfully requested, as is the allowance of each of these claims.

#### **Rejections under 35 U.S.C. § 103(a)**

Claims 1-6, 12-19, 21-23, 25, 56-67, 69, 73-78, and 80-97 stand rejected under 35 U.S.C. § 103(a).

The standard for establishing and maintaining a rejection under 35 U.S.C. § 103(a) is set forth in M.P.E.P. § 706.02(j), which provides:

There are several requirements in establishing a *prima facie* case of obviousness against the claims of a patent application. All of the limitations of the claim must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Even then, a claim “is not proved obvious merely by demonstrating that each of its elements was,

independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). The Office must also establish that one of ordinary skill in the art would have had a reasonable expectation of success that the purported modification or combination of reference teachings would have been successful. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). There must also be “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR* at 1396. That reason must be found in the prior art, common knowledge, or derived from the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006). A mere conclusory statement that one of ordinary skill in the art would have been motivated to combine or modify reference teachings will not suffice. *KSR* at 1396.

Pederson

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-72, 83-89 and 93-97 have been rejected under 35 U.S.C. § 103(a) for being directed to subject matter that is purportedly obvious in view of the subject matter taught by Pederson.

Pederson teaches a device with a light source that emits light having an intensity of “between 2,500 lux to 7,500 lux.” Col. 3, line 5; *see also* col. 1, lines 51-53.

Independent claim 1 is directed to a light therapy apparatus that with light sources that “illuminate the light emission area at an intensity of less than about 2,500 lux...”

As the “less than about 2,500 lux” recited by independent claim 1 is less than the “between 2,500 lux to 7,500 lux” of Pederson, it is respectfully submitted that Pederson does not teach or suggest each and every element of independent claim 1, as would be required to establish a *prima facie* case of obviousness against the subject matter recited by independent claim 1.

Claims 7-12, 19, 20 56-62, 64-67, 70-72, and 86 are each allowable, among other reasons, for depending directly or indirectly from independent claim 1, which is allowable.

With respect to independent claim 83, is it respectfully submitted that Pederson does not teach or suggest a light therapy device with “a cover pivotally connected to [a] portable housing and configured to transition from a closed position over a front side of the portable housing to an open position behind an opposite, back side of the portable housing, the cover being positioned over [a] light source when in the closed position and supporting the portable housing in an upright position when the cover is in the open position.” Instead, the teachings of Pederson are limited to an embodiment in which a leg 40 that is pivotally secured to the back side of a housing 10 flips out to support the housing (FIG. 3) and to an embodiment in which an upper, light source containing portion 110 of a housing flips up from a base 112 of the housing (FIG. 5). Regardless of where the devices taught by Pederson are mounted (*e.g.*, under the dashboard of an automobile or elsewhere), their covers still do not flip from a position over their light source to an opposite side of the housing.

Therefore, Pederson does not support a *prima facie* case of obviousness against independent claim 83.

Each of claims 84-86 is allowable, among other reasons, for depending directly or indirectly from independent claim 83, which is allowable.

As for independent claim 87, it is respectfully submitted that Pederson provides no teaching or suggestion of an ocular light therapy apparatus that includes at least one light source that is “configured to emit light primarily having a blue wavelength...” Rather, the teachings of Pederson are limited to light therapy apparatus that include “white LEDs,” which may be supplemented with LEDs of red or amber wavelengths. Col. 3, lines 17-26. Therefore, Pederson does not support a *prima facie* case of obviousness against independent claim 87

Claims 88 and 89 are both allowable, among other reasons, for depending directly or indirectly from independent claim 87, which is allowable.

Independent claim 93 is drawn to a light therapy device with a multi-functional element. The multi-functional element is secured to the housing and configured to be associated therewith in a first position in front of the housing and in a second position behind the housing. In the first



position, the multi-functional element covers the light source in the housing. In the second position, the multi-functional element supports the housing and the light source in at least one position that facilitates direction of light from the light source toward at least one eye of a subject. Again, regardless of whether the light therapy apparatus of Pederson is mounted to another structure, it includes no multi-functional element that meets the requirements of independent claim 93. Thus, the Office has not established a *prima facie* case of obviousness against the subject matter to which independent claim 93 is drawn.

Claims 94 and 95 are both allowable, among other reasons, for depending directly and indirectly, respectively, from independent claim 93, which is allowable.

It has been asserted that by mounting a device taught by Pederson to another structure, such as the underside of an automobile dashboard, the device would then include the features recited by independent claim 83 or by independent claim 93. As the structure to which the device is mounted would not form part of a cover or any other feature of any Pederson device, it would not alter the functionality of any feature of any Pederson device.

Even assuming, solely for the sake of argument, that Pederson did disclose an embodiment of a device with a cover that could pivot in the manner required by independent claim 83 or by independent claim 93, in order to enable use of the device, the cover would have to be mounted to another structure (*e.g.*, the underside of a dashboard), which would prevent the housing, within which a light source would be contained, from pivoting to a position where its back side is located adjacent to the mounted cover.

Thus, the Office has not provided any apparent reason for one of ordinary skill in the art to modify any of the devices of Pederson in the manner that has been asserted.

Whichter, Arao, and HP User's Guide

Claims 1, 2, 4-6, and 13-18 have been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is assertedly unpatentable over the subject matter taught in U.S. Patent 6,381,124 to Whichter et al. (hereinafter "Whichter"), in view of teachings from U.S. Patent 6,596,571 to Arao et al. (hereinafter "Arao") and "HP Jornada 700 Series Handheld

PC User's Guide (hereinafter "HP User's Guide"), and, further, in view of statement in the BACKGROUND section of the above-referenced application that batteries may be used to power cold cathode fluorescent lights (CCFLs).

It is respectfully submitted that there are at least two reasons that teachings from Whichter, Arao, and the HP User's Guide cannot be relied upon to establish a *prima facie* case of obviousness against any of the claims of the above-referenced application.

It is respectfully submitted that, without the benefit of hindsight that has been provided to the Office by the disclosure and claims of the above-referenced application, one of ordinary skill in the art wouldn't have been motivated to combine teachings from Whichter, Arao, and the HP User's Guide in the manner that has been asserted. This is because one of ordinary skill in the art of light therapy devices, as recited in the claims of the above-referenced application, would have no reason to apply teachings from laptop computers and other portable electronic devices with backlit LCD screens to light therapy devices. The backlit LCD screens of laptop computers and other portable electronic devices have very low power requirements and, consequently, output very little light. As such, one in the art of light therapy devices would not consider the light components of such devices to output light that is suitable for ocular light therapy.

Nor does Whichter provide any teaching or suggestion that the CCFL backlights for a computer monitor will output light suitable for ocular light therapy, as would be required for Whichter to teach or suggest each and every element of independent claim 1. Like Whichter, Arao and the HP User's Guide, as well as the BACKGROUND section of the above-referenced application, each lack any teaching or suggestion of a device that includes light sources that may output light suitable for use in ocular light therapy.

Therefore, it is respectfully submitted that a *prima facie* case of obviousness has not been established against either independent claim 1, as would be required to maintain the 35 U.S.C. § 103(a) rejections of that claim.

Each of claims 2, 4-6, and 13-18 is allowable, among other reasons, for depending directly or indirectly from claim 1, which is allowable.

Claim 5 is additionally allowable because each of Whichter, Arao, the HP User's Guide, and the BACKGROUND section of the above-referenced application lacks any teaching or suggestion of reflectors that are positioned behind CCFL tubes.

Claim 6, which depends from claim 5, is also allowable since none of Whichter, Arao, the HP User's Guide, or the BACKGROUND section of the above-referenced application teaches or suggests parabolic reflectors positioned behind CCFL tubes, with each CCFL tube being disposed at the focal point of a parabolic reflector.

Whichter in View of Terman

Claims 1-3, 12-19, 56-67, and 69 stand rejected under 35 U.S.C. § 103(a). The rejections of claims 1-3, 12-19, 56-67, and 69 are based upon teachings from Whichter, in view of the subject matter taught in U.S. Patent 5,589,741 to Terman (hereinafter "Terman") and, further, in view of art discussed in the BACKGROUND section of the above-referenced application.

The teachings of Whichter relate to a rugged, portable computer with a CCFL backlit LCD VGA monitor. Terman teaches a system for creating naturalistic illumination cycles to "reproduce an outdoor illumination level... at any geographic location... at any day of the year." Terman, col. 1, lines 10-20.

It is respectfully submitted that the only apparent reason for one of ordinary skill in the art to have combined teachings from Whichter and teachings from Terman would have been to update the computer of the system of Terman. There would have been no reason to replace the monitor of a computer with a light source that may be programmed to provide naturalistic illumination cycles, as the purpose of a computer monitor is to display data and images, not to "reproduce an outdoor illumination level" indoors.

As the lighting devices of Terman are not part of a computer monitor, the "apparent reason" for the combination that has presented by the Office is not actually a reason for incorporating room lighting into a computer monitor. Furthermore, the Office has asserted that one of ordinary skill in the art would have been motivated to increase the intensity of light emitted from the monitor of the computer disclosed in Whichter, but doing so would only increase the discomfort to an individual who has to view the monitor—using light sources that

reproduce outdoor light would be akin to looking into the sun. Therefore, the Office has not presented any apparent reason for one of ordinary skill in the art to replace the CCFL backlights of the monitor of the computer disclosed in Whichter with the high intensity lamps disclosed in Terman.

For this reason, the teachings of Whichter and Terman do not support a *prima facie* case of obviousness against any of claims 1-3, 12-19, 56-67, and 69, as would be required to maintain the 35 U.S.C. § 103(a) rejections of these claims.

Pederson in View of Marsh

Claims 1-6, 13-17, 21-23, 25, 73-78, 80-82, and 90-92 have been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is allegedly unpatentable over the subject matter taught in Pederson, in view of teachings from Marsh.

It has been asserted that one of ordinary skill in the art would have been motivated “to employ the inverter and CCFLs of Marsh in the device of Pederson... since these provide more uniform brightness, as taught by Marsh.” Office Action of December 12, 2008, page 12. Unfortunately, there would have been no reason for one of ordinary skill in the art to substitute the high intensity (between 2,500 lux and 7,500 lux at 12 inches) LEDs of the light therapy device of Pederson with CCFLs, as Pederson teaches away from the use of fluorescent lights in a portable device. Pederson, col. 1, lines 21-23.

Even so, it is respectfully submitted that Pederson and Marsh do not teach or suggest each and every element of several of the rejected claims.

With respect to the subject matter recited by independent claim 1, neither Pederson nor Marsh teaches or suggests a light therapy apparatus with light sources that output light suitable for ocular light therapy and of less than about 2,500 at a distance suitable for ocular light therapy.

With respect to independent claim 21, the asserted combination of reference teachings would require that the LEDs of the light therapy device of Pederson be replaced with CCFLs—a combination from which Pederson teaches away.

As for the subject matter to which independent claim 73 is directed, replacement of the LEDs of the light therapy device of Pederson with the CCFLs of Marsh, as the Office has asserted would have been obvious at page 8 of the January 10, 2008, Office Action, would result in a light therapy device that lacks LEDs. Independent claim 73 requires LEDs, however.

Moreover, neither Pederson nor Marsh teaches or suggests a light therapy device with its own power supply that has a “maximum weight of about four pounds,” as would be required to render the light therapy device of independent claim 73 obvious.

Pederson in View of Terman

Claims 63 and 79 have been rejected for reciting subject matter that is purportedly not patentable over teachings from Pederson, in view of the subject matter taught by Terman.

Claims 63 and 79 are allowable, among other reasons, for depending from independent claims 1 and 73, respectively, which are allowable.

It is respectfully requested that the 35 U.S.C. § 103(a) rejections of claims 1-6, 12-19, 21-23, 25, 56-67, 69, and 73-97 be withdrawn and that each of these claims be allowed.

**CONCLUSION**

It is respectfully submitted that each of claims 1-23, 25, 56-67, and 69-97 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,

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